



SCOTTSDALE BOARD OF ADJUSTMENT
3939 N. Drinkwater Boulevard
Kiva at City Hall
Scottsdale, AZ
JUNE 2, 2004
6:00 PM
APPROVED MINUTES

PRESENT: James Vail, Chair
Terry Kuhstoss, Vice Chair
Ernest Jones, Board Member
Howard Myers, Board Member
Carol Perica, Board Member
Neal Waldman, Board Member

ABSENT: Jennifer Goralski, Board Member (excused)

STAFF: Donna Bronski
Kurt Jones
Kira Wauwie
Al Ward
Kurt Jones

CALL TO ORDER

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Vail at 6:00 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

APPROVAL OF MINUTES

1. May 5, 2004

COMMISSIONER MYERS requested the following corrections: Reword the ninth sentence on page 3 to read: Commissioner Myers wanted to know why Mr. Amoroso elected to build a wall before the structure was laid out. Page 3, fourth paragraph. Mr. Amoroso stated that he was the general contractor. He said that he wanted the wall built to keep people out. Page 4, Paragraph four. Commissioner Myers commented that filling was the wrong alternative.

Commissioner Myers moved to approve the minutes as amended. Commissioner Jones seconded the motion. The minutes were approved as amended by a vote of six (6) to zero (0).

REGULAR AGENDA

2. [7-BA-2004](#) Casa Buena- Lot 38, a variance from Article V. Section 5.304.E & F regarding side yard setback requirements and the distance between main buildings on adjacent lots, on a parcel located at 7540 E Turquoise Avenue with Single Family Residential, Planned Residential District (R1-18 PRD) zoning.

CHAIR VAIL explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. He also explained the format for applicant testimony and public comment.

MR. WARD presented the case per the staff report. He noted that this case had been heard previously and had been continued from the May 5, 2004 meeting.

MR. PALECEK, the applicant presented his case to the Board. Mr. Palecek noted that he and his wife hoped to enjoy the same use of a 2000 plus square foot home as their neighbors. He explained that his home was 1600 square feet, and that the requested variance would allow him to remedy this situation. He read into the record an e-mail from Lynn Bertoni:

May 14, 2004

"Mr. or Ms. Cookson: As the former President of the Casa Buena Home Owners Association and a member of the Board of Directors for over ten years, I would like to send on some information about this case. It is admirable that the residents have contacted their neighbors about the changes to the setbacks. There are however, several homes in Casa Buena that have extended the footprints toward the side yard. Even one of the original

homes on Beryl Avenue was not built in accordance with this variance.

Besides Beryl Avenue, if you drive through the L shaped neighborhood, you will see three examples in the 7400 block of Via Estrella, which is a cul de sac, as well as an example along 75th Street. There are also homes that have been expanded in the cul de sacs off of 75th Street. Given this information, the neighbor who has contacted the city because he or she wants the setbacks to be consistent, does not have a case. I support the Palecek's plans to improve their home. Thank you. If I need to send this information to another party, please let me know. Lynn Bertoni, 7408 East Onyx Court."

MR. PALECEK went on to discuss the homes in the area with side yard setbacks varying from 4 to 7 feet. He reviewed the four criteria and maintained that his request satisfied all of them

(Chair Vail opened public comment.)

MR. RILEY MCQUADE, 7550 East Turquoise, Scottsdale, addressed the Board and noted that he had lived at that address for 22 years. He spoke in support of the variance request. He stated that as a former member of the Board for the HOA, he felt that the proposed changes would benefit the neighborhood and add to the value of the neighborhood homes.

MR. GORDON RASMUSSEN, 7530 East Turquoise, Scottsdale, also spoke in support of the variance, and reiterated the opinion that the changes would enhance the neighborhood. He commended the Paleceks for providing the plans to the neighbors well in advance of the application.

MR. ROGER CREHAN, 7541 East Turquoise, Scottsdale, stated that he lives directly across the street from the applicant. He indicated that property values would be increased as a result of the changes. He referred to staff's alternatives to the variance and noted that a two-story house would not be acceptable in a neighborhood of 150 single level homes.

(Chair Vail closed public comment.)

CHAIR VAIL noted that on his visit to the site, he had observed that the adjacent homes all had three car garages. He noted initial concern as to the east side of the house, but after learning that the distance between the two homes was 19 instead of 20 feet. He stated he would be in support of the variance request.

COMMISSIONER WALDMAN commented that, after visiting the site, he concluded that the request would not infringe upon the neighbors, and commended the applicant for their efforts. He expressed support for the variance.

COMMISSIONER MYERS stated that the Board's decision must be based on the four criteria and not on other properties that may or may not have received a variance. He noted that the applicant bought the land and home in its present condition and size, and therefore could not meet the special circumstances criteria. He stated that he could not support the request.

COMMISSIONER PERICA observed that there were gray areas with regard to all four criteria, and that she would strongly support approval of the variance

COMMISSIONER JONES commented that he had supported the request at the first hearing and as he felt that the four criteria had been met, he would support it again.

VICE-CHAIR KUHSTOSS stated that she felt that the Board had forgotten its function of basing its decisions on satisfaction of the four criteria. She commented that multiple wrongs don't make a right and should not influence the Board's judgment. Vice-Chair Kuhstoss also suggested that, if the variance were to be approved, the city exercise its appeal power in this case.

Vice-Chair Kuhstoss moved to deny the request for failing to meet the legal criteria. Commissioner Myers seconded the motion. The motion failed by a vote of two (2) to four (4), with Chair Vail and Commissioners Perica, Jones and Waldman voting "Nay".

Commissioner Perica moved to approve the request as presented. Commissioner Jones seconded the motion, which passed by a vote of four (4) to two (2), with Vice-Chair Kuhstoss and Commissioner Myers voting "Nay".

VICE-CHAIR KUHSTOSS reiterated that if there is an opportunity for appeal by the city, it should be done.

3. [8-BA-2004](#) Suarez Residence, a variance from Article V. Section 5.204.G. regarding wall height on a parcel located at 10239 N 65th Place with Single Family Residential (R1-35) zoning.

CHAIR VAIL stated that Commissioner Jones had recused himself from discussion and action on this item as he sits on the Board of property adjoining the property in question. Commissioner Jones left the meeting at this point.

MS. WAUWIE presented the case per the staff packet. She pointed out staff's conclusion that the four criteria had been satisfied, and that there had been no objections from the neighbors.

MR. BENNING, Benning & Associates, architects spoke to the Board and reviewed the proposed changes relating to the eight-foot wall. He noted that light and noise from church activities resulted in major impact on the Suarez residence.

MR. BENNING noted that the proposed solution had changed. He clarified the serpentine nature of the wall as opposed to zig and zag, which is intended to leave more of the oleanders in place. Mr. Benning also pointed out that the existing driveway would remain in its current location.

VICE CHAIR KUHSTOSS commented that the changes were substantial and that the variance request as presented was not really what was being requested. Ms. Wauwie replied that the request was still for a serpentine wall on the property line in the front yard, and characterized the request as being substantially the same. Chair Vail pointed out the different location for ingress and egress.

MS. BRONSKI noted that the posting was a request for a wall. She commented that it seemed to her to be a fairly minor change, but that at the pleasure of the Board, the case could be re-noticed.

CHAIR VAIL stated that he simply wanted to assure himself of a comfort level in proceeding with the case. Vice Chair Kuhstoss stated displeasure that the Applicant had made changes without resubmitting for the Board's authorization in a public hearing.

MR. BENNING noted that the ingress and egress were changed mainly due to considerations as to potential access by fire trucks.

MR. SUAREZ, the applicant, addressed the Board. He stressed that he supported the activities of the adjacent church, and simply wanted a buffer and some privacy from those activities by constructing an eight-foot wall. Mr. Suarez added that the pastor of the adjacent church was present and in support of the variance request.

CHAIR VAIL explained to the Applicant that he had the option of asking for a one-time continuance due to the fact that a full Board was not present. He stated

that the Applicant could make that determination after discussion of the request by the Board.

COMMISSIONER WALDMAN stated that he had not seen many cases that met the four criteria as well as this case did, and would support the variance request.

COMMISSIONER MYERS noted his displeasure as to what the city had allowed to happen in this particular instance. He noted that the four criteria had all been met and that he would be supporting the request.

COMMISSIONER PERICA concurred, noting satisfaction of the four criteria and stating her support for the variance.

VICE CHAIR KUHSTOSS stated that she would like to vote substance over form, but was required by statute not to. She commented that she felt there were other ways for the Applicant to preserve their privacy, and that the situation did not fall within the parameters of the law. She declined to support the variance.

CHAIR VAIL echoed the sentiments of Commissioner Myers, observing that the idea of an eight-foot wall was disturbing to him. However, after noting the volume of church traffic, Chair Vail stated that he would support the variance.

CHAIR VAIL asked the Applicant if he wanted to ask for a continuance. The Applicant declined. Chair Vail called for the vote.

Commissioner Myers moved to approve the variance as stated. Commissioner Perica seconded the motion. The motion passed by a vote of four (4) to one (1), with Vice Chair Kuhstoss voting "Nay", and an abstention by Commissioner Jones.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 7:25 PM.

Respectfully submitted,

"For the Record" Court Reporters